equity for the benefit of the equitable assignee. If, on the other hand, the legal claim survived, the conclusion is inevitable that the legal title passed to the State; and although the assignee may have had a legal power of attorney, irrevocable because coupled with an interest, to sue in the name of the assignor, the court had properly no right to allow him to sue in the name of the State when the State had obtained the title. Only upon the first view can these cases be supported; but even if they are supported upon the second view they do not go to the length of enforcing a trust against the State; the exercise of the legal power of attorney by the assignee would call upon the State for mere inaction, not for any positive action. In the principal case the creditors and shareholders could not compel the Crown to yield to their claims; that would be in effect compelling the Crown to act as trustee. But it is important to note that their equitable claims still existed, and that the Crown was morally bound to recognize them; the creditors and stockholders might well succeed by petition to the Crown.

CONVEYANCES IN CONSIDERATION OF SUPPORT. — In dealings between father and son there is often a lack of that careful regard to self-interest that marks ordinary business transactions, and in conveyances in consideration of support there is frequently a disregard of the most ordinary precautions. Cases of misplaced confidence have caused the courts much anxiety, and have led to the adoption of some very doubtful principles of law.

In *Payette* v. *Ferrier et al.*, 55 Pac. Rep. 629 (Wash. Sup. Ct.), a father conveyed his farm to his son in consideration of the son's promise to support him during life. After faithfully performing for a time, the son mortgaged the premises, and a few years later refused to perform further. The father filed a bill to have the property returned to him, and as the mortgagee knew all the facts the court ordered a reconveyance. The authority on the point is slight. All the cases date back to *Reid* v. *Burns*, 13 Ohio St. 49 [1861], which had for its sole authority a case where the reconveyance was decreed for fraud, and where the failure to support was a mere incidental fact. *Tracy* v. *Sacket*, 1 Ohio St. 54.

All the cases tend more to stating results than to giving reasons. The argument rests mainly on grounds of natural justice: that pecuniary damages are inadequate to compensate for the loss of the son's personal service; that nothing less than a right to revest the whole estate will give adequate protection. The result reached appeals to one's sense of justice. Can it be supported in principle? The conveyance is absolute. The parties do not think of possible default, for if they did a mortgage would certainly be taken as security. No condition or trust is contemplated and none is expressed. How, then, can the father retain any interest in the land? If the son had contracted to pay an annuity for life in return for the land, the transaction would be regarded as a sale, and the father would have a continuing vendor's lien on the land for the payment. 2 Dent, Vendors and Purchasers, 6th ed. 830. Why is not this also true in the principal case? The price of the land is the support for life. This view probably would support all the cases so far decided, for they have all been cases where the property was small in value, and where the whole sum that could be realized by a sale would probably be inadequate to insure the father's support in the future. In decreeing a reconveyance

direct the courts perhaps adopt an arbitrary way of reaching the result, for usually a vendor's lien only gives a right to have the property sold and the proceeds distributed. If, however, the value of the property is considerably less than the lien claim, the lienor can safely bid the property in for himself, as he will afterwards receive back all the purchase money. So when the father asks the court for a reconveyance, that relief is no more than a short cut to the proper result. Were the property much greater in value than the claim, a reconveyance would be hard to justify on the above principle, because of the son's right to the surplus. This question, however, has not yet come before the courts. In recent years the practice of granting some form of equitable relief on default by the son has become more common, and it now seems likely to find a permanent place in our law. It is to be hoped that soon its fundamental principles will be defined, and the doctrine placed on a sound basis.

THE RIGHTS OF A BENEFICIARY UNDER A CONTRACT. — In most American jurisdictions a beneficiary not a party to a contract may always sue; in England and in some few of the United States such a beneficiary can never sue. In New York a beneficiary can sue by exception where lineal relationship exists between promisee and beneficiary. In New York also there is the rule of *Lawrence* v. *Fox*, 20 N. Y. 268: when a promise looks to the satisfaction of a claim of a third party against the promisee such a quasi-beneficiary may sue. All of this law was involved in a recent decision of the New York Court of Appeals. The defendant entered into a contract with the husband of the plaintiff whereby the husband was to aid the defendant in overthrowing a clause of a will; and in event of success the defendant was to pay the wife, the plaintiff, $50,000. The husband gave the required assistance; the will was broken; but the defendant refused to pay. Upon appeal, the court by a vote of four to three allowed the plaintiff to succeed. *Buchanan* v. *Tilden*, 52 N. E. Rep. 724.

The majority insisted that the wife was within the exception of near relationship; and further the majority seem to decide that the obligation of the husband to support the wife enabled her to sue. As to the first reason: that idea is to be traced to the decision in an ancient case that a child might sue upon a promise made to its father for its benefit. *Dutton* v. *Poole*, 1 Vent. 318. The proposition of that case, although overruled in England, has survived in New York. The further step now taken by the majority in assimilating the case of husband and wife to the case of parent and child would be a fair one if the doctrine of the exception had any basis in theory or in policy; but such does not appear. So the court might well have refused to extend it. As to the second reason: the case did not come within the rule of *Lawrence* v. *Fox*, *supra*. The obligation of the husband to support the wife was not a claim upon which an action could be brought; nor did the promise look to the discharge of that obligation. *Durnherr* v. *Rau*, 135 N. Y. 219.

Now upon any modern conception of a promise and of a contract the one to whom the promise is made and from whom the consideration moves has alone the legal right to sue. And yet the rule allowing a beneficiary to sue reaches a most just result. In such case one looks to equity. In equity the rights of most beneficiaries are seen to be recognized and enforced. Why not of these beneficiaries? And if the beneficiary were allowed a bill for the specific performance of the promise in his behalf